



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: BAL/BOA Services, Inc.
File: B-233157
Date: February 9, 1989

DIGEST

Protest of the contracting agency's decision to deny upward price correction of allegedly mistaken low bid is sustained where the worksheets submitted to support the allegation of mistake establish the intended bid by clear and convincing evidence.

DECISION

BAL/BOA Services, Inc., protests the denial by the Veterans Administration (VA) of its preaward request to correct a mistake in its low bid submitted in response to invitation for bids (IFB) No. 520-33-88 issued by the VA Medical Center in Biloxi, Mississippi, for construction of a new administration building, maintenance service building, internment committal shelter, and other site improvements at the Biloxi National Cemetery.

We sustain the protest.

The IFB required bidders to submit only a total bid price, with no listing of separate line items. Five bidders responded to the solicitation. Bid opening resulted in the receipt of BAL/BOA's low bid of \$878,759 and four other bids of \$979,100, \$993,830, \$994,544, and \$1,014,283. The government estimate was \$981,000.

Because BAL/BOA's bid was substantially lower than the government estimate, the contracting officer requested verification from BAL/BOA. On the day following bid opening, BAL/BOA responded that it had discovered a clerical error in the final tabulation of its bid price. BAL/BOA stated that in tabulating its total bid price it inadvertently omitted a subcontractor's price of \$61,000 for landscaping which had been shown on its worksheets. BAL/BOA

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requested that it be allowed to increase its bid price by \$69,200 (\$61,000 plus \$8,200 in overhead, profit, bond/sales tax, and builder's risk insurance applicable to that amount), for a total bid price of \$947,989. In support of its mistake claim, BAL/BOA submitted its original 3-page worksheet, containing an itemized breakdown of its bid price, as well as the original adding machine tape, and a 5-page listing of all of its subcontractors' telephone quotations. The protester explained that in adding up the prices of itemized bid components listed on its 3-page worksheet, which included in-house costs and subcontractor quotations, the member of its staff responsible for tallying the list inadvertently failed to enter into the calculator the \$61,000 subcontractor quotation for landscaping.

Under Federal Acquisition Regulation § 14.406-3(a), a procuring agency may permit a low bidder to correct a mistake in its bid prior to contract award where the bidder submits clear and convincing evidence that a mistake was made, the manner in which the mistake occurred, and the intended bid. Price/CIRI Construction, B-230603, May 25, 1988, 88-1 CPD ¶ 500. For upward correction of a low bid, worksheets may constitute clear and convincing evidence if they are in good order and indicate the intended bid price and there is no contravening evidence. Continental Heller Corp., B-230559, June 14, 1988, 88-1 CPD ¶ 571.

The contracting officer initially determined that BAL/BOA had presented sufficient evidence of a mistake in bid and recommended upward correction of the bid by the requested amount of \$69,200. However, the VA's Director, Office of Acquisition and Material Management, ruled that the evidence provided by BAL/BOA was not clear and convincing as to either the existence of a mistake or the amount of the intended bid price. However, the Director did find that the evidence might reasonably support the existence of a mistake such that BAL/BOA would be allowed to either withdraw its bid or accept the contract award at its original bid price. Upon being informed of this decision, BAL/BOA filed its protest in our Office.

In denying the protester's request for correction, the VA expressed doubt whether BAL/BOA ever intended to include a separate cost for landscaping in its bid. The VA points out that the line for landscaping on the protester's worksheets contains erasure marks in the "sub." (subtotal) column and the "total" column. The VA further notes that the worksheets indicate that when the cost of one line item was included in another line item, a note was written after the first line item and dashes were entered in the "total" column. The VA argues that, because of the erasures in the

line for landscaping, it is possible that the cost of this item was already included in the cost of another item; that no separate cost for landscaping was intended, and that BAL/BOA had entered dashes in the total column which it erased and then inserted \$61,000 when it submitted its mistake claim. The VA suggests that BAL/BOA may have included landscaping within the \$74,712 shown on the worksheets for the storm drainage system, because the protester's list of subcontractors' quotations contains no entry for the storm drainage system, and the VA had no other data on how BAL/BOA arrived at a price for this item. The agency also suggests that perhaps landscaping was simply an "uncosted" item.

The protester explains that in pricing a bid, it first prepares its worksheets, listing the elements of the work as line items to serve as a checklist. It then enters material and subcontractor quotations on other sheets. The best quotations are entered on the worksheets, which are updated as better prices are received. This results in the erasures on the worksheets.

BAL/BOA explains in detail that the erasures on the line for landscaping were made when it received the lower quotation of \$61,000 for landscaping, that it did not combine landscaping with any other item on the worksheets, and that it did not intend to offer landscaping as an "uncosted item."

Our review of the worksheets submitted by BAL/BOA confirms the fact that BAL/BOA made an error in omitting the cost for landscaping from its bid price. We find no basis in the worksheets for the VA's belief that BAL/BOA may have combined landscaping with some other item or that the protester did not intend to charge the agency for landscaping. The worksheets contain numerous erasures, and it is more reasonable to conclude that BAL/BOA inserted a subcontractor's lower price than that it included the cost of landscaping, which is one of the highest priced items in the worksheets, in the cost of another item. Regarding the VA's theory that BAL/BOA incorporated landscaping in the storm drainage system, BAL/BOA has provided us with separate worksheets detailing how it priced the storm drainage system which clearly show that this item did not include any costs for landscaping.

The VA argues that even if BAL/BOA intended to include a separate price for landscaping, the list of subcontractor quotations submitted by BAL/BOA does not constitute clear and convincing evidence of the price intended. The VA notes that four subcontractor quotations are listed, ranging from \$61,000 to \$83,239, and therefore it is not clear which of these quotations the protester intended to include. In this regard, the VA notes that on another item, electrical work, BAL/BOA apparently did not use the lowest subcontractor quotation. Finally, the VA questions when BAL/BOA received the low quotation for landscaping, since the written quotation is dated after bid opening and does not indicate that the quotation was provided prior to bid opening.

BAL/BOA responds that while it received four quotations for landscaping, it intended to use the lowest quotation of \$61,000, which was consistent with its across-the-board use of the lowest quotation for each item on the worksheet. This is also true of the quotation for electrical work, BAL/BOA asserts, which the VA had questioned. While the worksheet line item shows a price of \$205,000, the second highest quotation, BAL/BOA explains that this amount was used to total the bid, but that it received a lower quotation of \$171,500 after the bids were totaled and it made an adjustment at the end of the worksheets for the difference of \$33,500, in arriving at its bid price. The worksheets do, in fact, reflect a deduction of this amount as a "Late Item," beside an electrical contractor's name. We think, therefore, that the use of the \$61,000 landscaping quotation, and not one of the higher ones, has been shown to be entirely consistent with the way BAL/BOA priced its bid.

BAL/BOA also explains that the low landscaping quotation had been received by telephone prior to bid opening, and that it requested the subcontractor to provide the written confirmation of the telephone quotation only after meeting with the contracting officer after bid opening. This explains why the written quotation post-dates bid opening.

In sum, we find that the BAL/BOA has presented clear and convincing evidence that a mistake was made and of its intended bid price. Accordingly, we are recommending that the VA allow correction of BAL/BOA's bid by \$61,000 plus the amounts claimed for additional overhead, profit, bond and

sales tax, and builder's risk insurance, for a total increase of \$69,200, and make award to BAL/BOA at its corrected bid price of \$947,989, if otherwise proper.

The protest is sustained.

A handwritten signature in cursive script, reading "Milton J. Foster".

Acting Comptroller General
of the United States